

Welch with EAI contacted Jeff Browers with Alliance regarding Alliance's attachment violations in its service area. At that time, Mr. Welch offered to work with Alliance in correcting the numerous violations in those circuits. Alliance never responded and did not correct the violations.⁵⁸⁸ EAI denies the remaining allegations in paragraph 130 of the Complaint.

342. EAI admits that a test safety inspection of a small portion of the total Alliance system was conducted by USS on July 30, 2002 as stated in **Paragraph 131**. EAI affirmatively states that the test safety inspection of the Alliance system was prompted by continuing reports from the field by EAI construction personnel, EAI engineering personnel and service outages caused by multiple violations by Alliance of the pole attachment agreement and the NESC. By way of example, between 1998 and 2002, EAI documented 32 outages or serviceman trips attributed to attachment violations on the part of Alliance and prior to the test safety inspection, EAI construction personnel were often required to respond to problems caused by Alliance once or twice a week.⁵⁸⁹ EAI affirmatively states that Jeff Browers with Alliance was contacted by Brad Welch with EAI approximately one year before USS performed the test safety inspection in Plumerville. Mr. Welch discussed some of the above described violations of the pole attachment agreement by Alliance with Mr. Browers. At that time, Mr. Welch stated that EAI would like to work with Alliance to correct Alliance's violations and suggested that the violations be corrected initially in Plumerville and then in the Greenbrier area. Alliance never responded to EAI's offer and, likewise, Alliance did not correct violations of the pole attachment agreement or the NESC.⁵⁹⁰ In response to Alliance's continued failure to respond and the ongoing nature of the

⁵⁸⁸ Declaration of Brad Welch at ¶ 10.

⁵⁸⁹ Declaration of Bernard Neumeier at ¶ 18.

⁵⁹⁰ Declaration of Brad Welch at ¶ 10.

safety issues created by Alliance's non-compliance, EAI authorized the test safety inspection. EAI states that Alliance was not involved in the test safety inspection and no prior notice to or involvement by Alliance in the inspection was required.⁵⁹¹ EAI denies the remaining allegations in paragraph 131 of the Complaint.

343. EAI admits that Alliance's facilities caused outages to EAI facilities and that the test safety inspection was necessary. EAI denies the remaining allegations in **Paragraph 132** of the Complaint and affirmatively refers to its responses to the allegations in paragraph 131 of the Complaint.

344. EAI admits the allegations in **Paragraph 133** of the Complaint. EAI affirmatively states that the test safety inspection involved a walking inspection of 3.4 miles of lines and a driving inspection of 4 additional miles of lines, all in the Plumerville area. The walking portion of the test safety inspection revealed 79 violations on 42 of the 160 poles inspected.⁵⁹² On the 4 miles of the Alliance system which were driven, measurements were taken where obvious violations existed. This portion of the test safety inspection revealed another 39 violations on 23 poles.⁵⁹³ As an example of the violations recorded, it was determined that there were only 2 locations in the entire area of the test safety inspection where Alliance had set its own anchors. In all other instances, Alliance had impermissibly attached to the EAI anchor. In all, in excess of 25% of the poles and attachments inspected were in violation of the pole attachment agreement or the

⁵⁹¹ Declaration of Brad Welch at ¶ 12.

⁵⁹² Declaration of Tony Wagoner at ¶ 48.

⁵⁹³ *Id.*

NESC.⁵⁹⁴ Due to the high rate of material violations by Alliance in the area of the test safety inspection, EAI made the prudent decision to proceed with a full safety inspection.

345. EAI denies the allegations in **Paragraph 134** of the Complaint.

346. EAI denies the allegations in **Paragraph 135** of the Complaint.

347. EAI denies the allegations in **Paragraph 136** of the Complaint. EAI affirmatively states that it retained USS as was its right under the terms of the pole attachment agreement. Also, prior notice to Alliance was not required under the pole attachment agreement. EAI affirmatively states that Alliance was asked to participate in the full safety inspection process and to ride along with the USS inspectors. However, Alliance refused to participate.⁵⁹⁵

348. EAI admits the allegations in **Paragraph 137** of the Complaint. EAI affirmatively states that Alliance has been invoiced \$249,949 for the safety inspection and post inspection invoices, that despite demand such invoices have not been paid and that such amount remains due and owing to EAI.⁵⁹⁶

349. EAI denies the allegations in **Paragraph 138** of the Complaint. The allegations in the second sentence in this paragraph are in the nature of a legal argument, and are therefore not amenable to being admitted or denied. As explained herein, the safety inspection conducted was not a routine inspection, and is therefore not limited to the one year time frame that

⁵⁹⁴ *Id.*

⁵⁹⁵ Declaration of Tony Wagoner at ¶ 49.

⁵⁹⁶ Declaration of David B. Inman at ¶ 20.

Complainants seek to impose with respect to cost recovery. To the extent the allegations of this paragraph are deemed factual allegations, they are denied.

350. EAI denies the allegations in **Paragraph 139** of the Complaint. EAI affirmatively states that it was not obligated to distribute charges among attachers as suggested. To the extent an “inventory” was conducted, which was not the intent or purpose of the safety inspection, EAI denies it was defective. Finally, EAI denies the characterization that the overhead charge assessed was unreasonable.

351. EAI denies the allegations in **Paragraph 140** of the Complaint. EAI affirmatively states that the CATV safety inspections did not entail a survey of all of EAI’s facilities on the inspected circuits but, instead, was only a safety inspection of cable plant on poles. Again, due to Complainants’ failure to provide accurate maps of the locations of their attachments, USS was forced to reasonably search for poles with CATV attachments. The cost to inspect such poles should be borne by Complainants due to their lack of cooperation in the process and inability to provide accurate strand maps of the attachments. EAI affirmatively states that the CATV safety inspections performed by USS included a small number of poles owned by ILECs but which are subject to joint use agreements with EAI. Pursuant to such agreements, EAI controls the area on each such pole where it has attachments. EAI is within its rights to inspect those areas to insure that CATV attachments are not trespassing into the areas under EAI’s control and thereby creating safety problems. EAI also measured mid-span separations between poles owned by EAI and SBC. EAI denies the remaining allegations of paragraph 140 of the Complaint.⁵⁹⁷

⁵⁹⁷ Declaration of Wilfred Arnett at ¶ 9.

352. EAI admits the allegations in **Paragraph 141** of the Complaint. EAI affirmatively states that 7,305 violations of the pole attachment agreement and NESC have been noted and reported to Alliance.⁵⁹⁸ Despite this notice, Alliance has failed and refused to correct its violations and has not cured its multitude of breaches of the pole attachment agreement and the NESC.

353. EAI admits the allegations of **Paragraph 142** of the Complaint. EAI affirmatively states that the completion date for post-correction inspections of the Alliance system is indeterminate due to Alliance's failure to correct the noted violations of the pole attachment agreement and the NESC. On information and belief, 6,005 of the 7,305 noted violations remain uncorrected to date.⁵⁹⁹

354. EAI denies the allegations in **Paragraph 143** of the Complaint. EAI affirmatively states that, on information and belief, Alliance has corrected 1,300 of the 7,305 violations of the pole attachment agreement and the NESC.⁶⁰⁰ Of the total violations noted during the safety inspection, 1,582 violations consist of Alliance's improper bonding of its cable facilities to EAI grounds in violation of the pole attachment agreement and applicable NESC requirements. On information and belief, Alliance has corrected 674 of these bonding violations but 908 additional bonding violations remain uncorrected.⁶⁰¹

355. As to **Paragraph 144**, EAI admits that Alliance has violated the pole attachment agreement and the NESC involving at-pole or mid-span clearance between Alliance cable and power lines or telephone lines, but denies the remaining allegations of Paragraph 144 of the

⁵⁹⁸ Declaration of Wilfred Arnett at Attachment C.

⁵⁹⁹ Declaration of Wilfred Arnett at Attachment C.

⁶⁰⁰ Declaration of Wilfred Arnett at Attachment C.

⁶⁰¹ Declaration of Wilfred Arnett at Attachment C.

Complaint. EAI affirmatively states that prior to the commencement of the safety inspection, Alliance was encouraged to participate and ride along with the USS auditors. Alliance refused to participate. Thereafter, Alliance was provided a list of the violations. In subsequent meetings, Alliance was repeatedly informed that if it disagreed with any of the violations, it could meet with EAI and/or USS and demonstrate that the violations were not the fault of Alliance. Again, Alliance refused to participate in this process.⁶⁰²

356. EAI denies the allegations of **Paragraph 145** of the Complaint. EAI affirmatively states that USS noted 690 instances where Alliance had improperly attached its cable guys to EAI anchors.⁶⁰³ EAI affirmatively states that it never consented to Alliance attaching its cable guys to EAI's anchors, and further states that attaching the cable guys to EAI anchors does not comply with the NESC. In order to comply with the NESC, a pole loading study must be performed to determine if the existing anchor's size, depth and soil conditions are sufficient to allow another attachment on EAI anchors. However, due to variations in pole loadings and other field conditions, the anchors cannot be assumed to be adequate to carry the tension of multiple wires attached to a pole. Each case would require a pole loading study to determine if the anchor was adequate to carry an additional tension from the cable company's messenger wire. Otherwise, the Alliance guy must have its own anchor.⁶⁰⁴

357. EAI denies the allegations in **Paragraph 146** of the Complaint. EAI affirmatively states that if there is insufficient space available, Alliance has the option of paying to increase the

⁶⁰² Declaration of Tony Wagoner at ¶ 49.

⁶⁰³ Declaration of Wilfred Arnett at Attachment C.

⁶⁰⁴ Declaration of Lonnie Buie, Professional Engineer, Pettit & Pettit Consulting Engineers, Inc., at ¶¶ 61-64.

available space on the pole (which may include replacing the existing pole with a larger pole) or burying its cable. So long as the existing pole can safely accommodate EAI or, in some cases, EAI and a joint use partner, EAI has no obligation to replace an existing pole, much less pay the cost of replacing that pole.⁶⁰⁵ However, where a safety concern is noted that is the responsibility of EAI, EAI will correct that concern and bear the cost of that correction.

358. EAI is without information sufficient to form a belief in the truth of the allegations contained in **Paragraph 147** of the Complaint and therefore denies same. EAI estimates that the cost to correct all noted violations is less than the amount Alliance purports to claim as its estimate.

359. As to **Paragraph 148**, EAI admits that its attempts to resolve this dispute with Alliance have been fruitless due to the lack of cooperation and stalling tactics by Alliance. EAI denies the remaining allegations of paragraph 148 of the Complaint.

WEHCO

360. While objecting to Complainants' characterization of "Targeted Communities," EAI admits that WEHCO serves the Arkansas cities of Searcy and Pine Bluff as indicated in **Paragraph 149**.

361. EAI is without information sufficient to form a belief in the truth of the allegations in the first sentence of **Paragraph 150** of the Complaint and therefore denies same. EAI admits the allegations in the second sentence of paragraph 150 of the Complaint. EAI affirmatively states that over the course of a test safety inspection conducted in WEHCO's Pine Bluff and Searcy

⁶⁰⁵ *Southern Company v. FCC*, 293 F. 3d 1338 (11th Cir. 2002).

service areas, one circuit consisting of 537 poles was inspected in Pine Bluff and portions of four additional circuits, consisting of 777 poles, were inspected in Searcy.⁶⁰⁶

362. EAI is without information sufficient to form a belief in the truth of the allegations contained in **Paragraph 151** of the Complaint and therefore denies same.

363. EAI is without information sufficient to form a belief in the truth of the allegations contained in **Paragraph 152** of the Complaint and therefore denies same.

364. EAI admits the allegations in **Paragraph 153** of the Complaint.

365. EAI denies the allegations in **Paragraph 154** of the Complaint. EAI affirmatively states that neither the Pine Bluff nor Searcy WEHCO systems comply with the January 1, 1985 agreement between EAI and WEHCO or NESC requirements. EAI further states that disputes with WEHCO regarding compliance with the pole attachment agreement predate the test safety inspection performed. By way of example, EAI has documented several disputes and discussions with WEHCO since 1997, including damage to EAI facilities resulting in outages, attachments failing to meet EAI and/or NESC guidelines, failure to submit attachment requests in the form provided by the pole attachment agreement, unpaid invoices, and unreported attachments resulting in back-billing.⁶⁰⁷ Moreover, in July and August of 2002, WEHCO made application to attach to 61 poles along Dollarway Road in its Pine Bluff service area. The

⁶⁰⁶ Declaration of Wilfred Arnett at n.2.

⁶⁰⁷ Declaration of Michael Willems at ¶ 11.

attachments were inspected after WEHCO installed the cable. The inspection revealed 55 violations that WEHCO was instructed to correct on or about October 22, 2002.⁶⁰⁸

366. EAI admits that the aerial cable plant constructed by WEHCO does not comply with the terms of the pole attachment agreement but denies the remaining allegations in **Paragraph 155** of the Complaint. EAI specifically denies that WEHCO's aerial cable plant complies with NESC requirements. EAI also specifically denies that it ever consented or acquiesced to WEHCO's violations of the pole attachment agreement or NESC guidelines. EAI has requested that WEHCO provide documentation of EAI's alleged consent but WEHCO has failed to provide any such proof.

367. EAI is without information sufficient to form a belief in the truth of the allegations contained in **Paragraph 156** of the Complaint and therefore denies same.

368. EAI denies the allegations contained in **Paragraph 157** of the Complaint. EAI is without information sufficient to form a belief as to the allegations of the first and second sentence of Paragraph 157. EAI affirmatively states that WEHCO added large numbers of power supplies in 1995 and electric equipment was replaced in 2001 in Searcy, Arkansas.⁶⁰⁹ EAI was also not provided with any notice of WEHCO's upgrade activities, either before or after they were conducted.

369. As referenced in **Paragraph 158**, EAI admits that in February and March of 2004, USS conducted a test safety inspection of one circuit in WEHCO's Pine Bluff service area and of

⁶⁰⁸ Declaration of Tony Wagoner at ¶ 51.

⁶⁰⁹ Declaration of Michael Willems at ¶ 14.

portions of 4 circuits in WEHCO's Searcy service area. EAI is without information sufficient to *form a belief in the truth of the remaining allegations contained in paragraph 158 of the Complaint* and therefore denies same.

370. EAI denies the allegations in **Paragraph 159** of the Complaint. EAI affirmatively states that contrary to plaintiffs' implications, WEHCO was aware in January of 2004 of the upcoming test safety inspection through communications between EAI and WEHCO personnel including Donny Gaines, Dan Hodges, and Bill Haynie.⁶¹⁰ WEHCO was never denied the opportunity to accompany USS in its test safety inspection and, despite knowledge of the test safety inspection, WEHCO did not inquire about accompanying USS until the day before the inspection was complete.⁶¹¹ EAI affirmatively states that it retained USS as was its right under the terms of the pole attachment agreement and prior notice to WEHCO was not required. Moreover, the pole attachment agreement does not require that WEHCO be allowed to accompany USS on a test safety inspection.

371. EAI admits the allegations of **Paragraph 160** of the Complaint.

372. EAI admits the allegations of **Paragraph 161** of the Complaint. EAI affirmatively states that in the Searcy area inspected during the test inspection, there were 1,276 instances where a WEHCO attachment touched one of the 777 poles. Of these attachments, 1,064 violations were noted to WEHCO.⁶¹²

⁶¹⁰ Declaration of Michael Willems at ¶ 16.

⁶¹¹ Declaration of Michael Willems at ¶17.

⁶¹² WEHCO Violation Progress Report at Exhibit "84."

373. As to **Paragraph 162**, EAI admits that on or about May 20, 2004, it, along with representative of USS and WEHCO, met to discuss the findings of the test safety inspection. EAI affirmatively states that there were 556 instances where a WEHCO attachment touched one of the 537 poles inspected in Pine Bluff. Of these attachments, 482 violations were noted to WEHCO.⁶¹³ EAI denies the remaining allegations of paragraph 162 of the Complaint.

374. EAI denies the allegations in **Paragraph 163** of the Complaint.

375. EAI denies the allegations in **Paragraph 164** of the Complaint.

376. With respect to **Paragraph 165**, EAI admits that WEHCO has been invoiced \$11,024.25 for the test safety inspection in the Searcy area and \$4,203.36 for the test safety inspection in the Pine Bluff area. EAI affirmatively states that the total \$15,228 remains past due and owing.⁶¹⁴ EAI affirmatively states that WEHCO has been provided detail and support for the invoices to WEHCO.⁶¹⁵ EAI denies the remaining allegations in Paragraph 165 of the Complaint, and rejects the characterization of the safety inspection as a routine inspection. As explained herein, the safety inspection conducted was not a routine inspection, and is therefore not limited to the one year time frame that Complainants seek to impose with respect to cost recovery. To the extent the allegations of this paragraph are deemed factual allegations, they are denied.

377. EAI denies the allegations in **Paragraph 166** of the Complaint. EAI further denies that it was obligated to distribute charges among attachers as suggested. To the extent an "inventory" was conducted, which was not the intent or purpose of the safety inspection, EAI denies it was

⁶¹³ *Id.*

⁶¹⁴ Declaration of David B. Inman at ¶ 21.

⁶¹⁵ Declaration of David B. Inman at ¶ 21.

defective. Finally, EAI denies the characterization that the overhead charge assessed was unreasonable.

378. EAI denies the allegations in **Paragraph 167** of the Complaint. EAI affirmatively states that the CATV safety inspections did not entail a survey of all of EAI's facilities on the inspected circuits but, instead, was only a safety inspection of cable plant on poles. Due to Complainants' failure to provide accurate, if any, maps of the locations of their attachments and due to the Complainants' willful breach of their agreements by placing unauthorized attachments on EAI poles, EAI was forced to search for poles with CATV attachments.⁶¹⁶ The cost to inspect such poles should be borne by Complainants due to their failure to properly apply attachments and breaches of the various agreements between the parties. EAI affirmatively states that the CATV safety inspections performed by USS included a small number of poles owned by SBC but which are subject to joint use agreements with EAI.⁶¹⁷ Pursuant to such agreements, EAI controls the area on each such pole where it has attachments. EAI is within its rights to inspect those areas to insure that CATV attachments are not trespassing into the areas under EAI's control and thereby creating safety problems. EAI also measured some mid-span separations between poles owned by EAI and SBC.

379. EAI affirmatively states that in March and May of 2004, it reported a total of 1,546 violations of the pole attachment agreement and NESC to WEHCO.⁶¹⁸ EAI denies the remaining allegations in **Paragraph 168** of the Complaint.

⁶¹⁶ Declaration of Tony Wagoner at ¶ 9.

⁶¹⁷ Declaration of Wilfred Arnett at ¶ 9.

⁶¹⁸ Declaration of Wilfred Arnett at Attachment C.

380. EAI denies the allegations in **Paragraph 169** of the Complaint. EAI affirmatively states that, despite requests, WEHCO has not provided it or USS any documentation of allegedly missed poles or "poor inspection analysis," whatever that term is intended to mean.⁶¹⁹

381. EAI is without information sufficient to form a belief as to the truth of the allegations in **Paragraph 170** of the Complaint and therefore denies same. EAI affirmatively states that it has repeatedly requested progress reports from WEHCO regarding efforts, if any, to correct the violations discovered over the course of the test safety inspection. Despite these requests, no such information has been provided EAI or USS other than vague claims that WEHCO was "making progress" on correcting its violations.⁶²⁰

382. EAI is without information sufficient to form a belief as to the truth of the allegations in **Paragraph 171** of the Complaint and therefore denies same. EAI affirmatively states that WEHCO's cost to correct the violations noted in the course of the test safety inspection should reflect the actual cost to correct the violations and would, therefore, not be excessive.

383. EAI admits that its attempts to resolve this dispute with WEHCO have been fruitless. EAI denies the remaining allegations of **Paragraph 172** of the Complaint.

COX

384. On information and belief, EAI admits that Cox has recently completed system rebuilds in several of its Arkansas service areas and is beginning rebuilds in the Gurdon and Russellville, Arkansas areas. EAI affirmatively states that, unlike its experience with Comcast, Alliance and

⁶¹⁹ Declaration of Tony Wagoner at ¶ 51.

⁶²⁰ Declaration of Michael Willems at ¶ 13; Declaration of Tony Wagoner at ¶ 51.

WEHCO, Cox has indicated a previous willingness to cooperate and work with EAI and USS to identify and rectify violations of the Cox pole attachment agreement and to prevent violations during the course of Cox's rebuilds of its systems. For example, the rebuild in Magnolia is complete and all noted violations have been corrected by Cox.⁶²¹ Additionally, Cox, EAI and USS have met on several occasions to discuss compliance with the pole attachment agreement and to review preliminary work in additional service areas.⁶²² EAI denies the remaining allegations of **Paragraph 173** of the Complaint.

385. While objecting to Complainants' characterization of "Targeted Communities," EAI admits that Cox serves the Arkansas communities of Magnolia, Malvern, Gurdon, and Russellville as specified in **Paragraph 174**.

386. EAI is without information sufficient to form a belief in the truth of the remaining allegations in **Paragraph 175** of the Complaint and therefore denies same.

387. EAI is without information sufficient to form a belief in the truth of the allegations in **Paragraph 176** of the Complaint and therefore denies same.

388. EAI admits the allegations in **Paragraph 177** of the Complaint.

389. EAI is without information sufficient to form a belief in the truth of the allegations in the first sentence of **Paragraph 178** of the Complaint and therefore denies same. EAI affirmatively states that the rebuilds to the Cox system have been performed in the recent past or are currently being performed. EAI affirmatively states that it had considerable discussions with Cox in the

⁶²¹ Declaration of Tony Wagoner at ¶ 56.

⁶²² Declaration of Tony Wagoner at ¶ 26.

years 2000 and 2001 regarding its construction practices during its rebuilds in the El Dorado and Arkadelphia areas. EAI affirmatively refers to its response to the allegations in Paragraph 43 of the Complaint. EAI denies the remaining allegations in paragraph 178 of the Complaint.

390. EAI denies the allegations in **Paragraph 179** of the Complaint and affirmatively states that Cox completely rebuilt its systems in the Malvern and Magnolia areas commencing in 2002.⁶²³ EAI affirmatively states that Cox worked in close cooperation with USS in performing the Magnolia rebuild and, consequently, once the work was completed by Cox, there were no violations to correct.⁶²⁴ In fact, the Magnolia rebuild is an example of how Complainants can comply with the terms of the various agreements if they are willing to cooperate and make good faith efforts to keep their facilities safe and in good working order. Unfortunately, this degree of compliance and cooperation has been the exception rather than the rule. EAI is without information sufficient to form a belief in the truth of the remaining allegations in paragraph 179 of the Complaint and therefore denies same.

391. EAI denies the allegations in **Paragraph 180** of the Complaint. EAI affirmatively states that there are currently 108 violations of the pole attachment agreement or the NESC remaining for correction in the Malvern area. Of these violations, 58 require make ready which have all been designed and delivered to Cox for action. All of the 108 violations have been reported to Cox but have not, as yet, been repaired.⁶²⁵

392. EAI denies the allegations in **Paragraph 181** of the Complaint.

⁶²³ Id. at ¶ 18.

⁶²⁴ Declaration of Tony Wagoner at ¶ 56.

⁶²⁵ Id. at ¶ 18.

393. EAI denies the allegations in **Paragraph 182** of the Complaint. EAI affirmatively states on information and belief that during the rebuild process in Magnolia and Malvern, Cox set its own anchors and, in fact, removed their earlier attachments from EAI's anchors. Rod Rigsby, the Cox Regional Construction Manager informed USS that he had been instructed by Cox management to never attach to EAI's anchors. EAI further states that during the rebuild process, EAI and USS complained on numerous occasions regarding the construction methods employed by Cox. These complaints included failure to meet bonding requirements, installing strands of cable without first setting anchors, and multiple conduits on poles that blocked climbing space. These complaints are being resolved by Cox to EAI's satisfaction in a timely manner.

394. EAI admits the allegations in **Paragraph 183** of the Complaint but affirmatively states that on information and belief these projects are complete rebuilds of this cable plant not simply "upgrades" as termed by Cox. EAI affirmatively states that on information and belief Cox is also conducting a rebuild of its facilities in the Jonesboro, Arkansas area.⁶²⁶ Again on information and belief, Cox commenced this rebuild in 2002 and at that time hired a contractor to perform make ready and string cable. The work of this contractor was determined to be so shoddy and unacceptable that the electric utility and pole owner required Cox to cease work on the rebuild until the problems with the Cox contractor's work were resolved.⁶²⁷ In order to insure that the necessary work was performed properly and safely, Cox hired USS to perform make ready and other services in Jonesboro. On information and belief, USS has billed Cox approximately \$900,000 for this work and Cox has paid USS almost all of this amount. USS continues to perform work for Cox in Jonesboro as part of its rebuild. This is the same USS that

⁶²⁶ Declaration of Wilfred Arnett at ¶ 11; Declaration of Tony Wagoner at ¶ 55.

⁶²⁷ Declaration of Wilfred Arnett at ¶ 11.

Cox and the other Complainants now attempt to demonize and discredit throughout their Complaint.

395. With respect to **Paragraph 184**, EAI affirmatively states that it retained USS to perform a pre-construction inspection in Magnolia and Malvern in an effort to inspect and clear violations of the pole attachment agreement and the NESC before Cox placed attachments on the relevant poles during the course of the rebuild. For example, Cox furnished EAI engineering drawings with make ready work associated with the Cox system rebuild. In turn, EAI asked USS to audit 2 of 14 CATV nodes to determine if Cox's engineering drawings adequately represented the make ready work required for the rebuild.⁶²⁸ The pre-construction inspection determined that Cox engineering drawings were adequate and such drawings were used to identify make ready work, though additional make ready work was identified as Cox began placing new cable. USS was also retained to perform additional necessary make ready in the Magnolia and Malvern areas including rearrangement and replacement of poles to accommodate the Cox rebuild.⁶²⁹ EAI admits that it retained USS to perform a post-construction inspection in Magnolia and Malvern to verify that the Cox rebuild was installed to the specifications agreed upon by all parties involved and to determine the number of pole attachments after the rebuild.⁶³⁰ EAI affirmatively states that it was not required to issue an RFP or solicit competitive bids to perform these inspections. EAI denies the remaining allegations in paragraph 184 of the Complaint.

396. EAI admits that Cox has been billed more than \$200,000 for USS construction inspection related charges for the rebuild in Magnolia and Malvern. EAI denies the remaining allegations

⁶²⁸ Declaration of Wayne Harrell at ¶ 17.

⁶²⁹ Id. at ¶ 19.

⁶³⁰ Declaration of Tony Wagoner at ¶ 57.

in **Paragraph 185** of the Complaint and affirmatively states that Cox has been provided itemized bills in support of the invoices.

397. EAI denies the allegations in **Paragraph 186** of the Complaint and affirmatively states that itemizations for the billings to Cox have been provided.

398. EAI denies the allegations of **Paragraph 187** of the Complaint. EAI affirmatively states that two employees of Entergy Mississippi, Inc. ("EMI") met with Cox regarding an upcoming upgrade project by Cox in Northern Mississippi. During this meeting with EMI employees, Cox indicated a preference that EMI and Cox hire a contractor to manage the upgrade in Northern Mississippi. No EAI employees were present at this meeting. The EMI employees deny making any of the statements attributed to them in paragraph 188 of the Complaint and further deny that the subjects of Cox's operations in Arkansas or USS were ever mentioned during this meeting.⁶³¹

One of the EMI employees, Richard Stevens, may very well have referred to a presentation of USS as a "dog and pony show" but denies the allegations that USS promised Entergy that it would recover the full amount of inspection costs, get its aerial plant refurbished and earn a profit of 10% as alleged below in Paragraph 188.⁶³² EAI affirmatively states that the cost to accommodate cable rebuilds and upgrades should not be borne by EAI. The various agreements between EAI and the Complainants all clearly allocate costs such as make-ready engineering, construction, and inspection to the Complainants and such allocation is fair, reasonable, and equitable as it is occasioned by the attacher's needs. Furthermore, as EAI has been forced to shoulder this responsibility due to the failure of the Complainants to abide by the terms of the

⁶³¹ Declaration of Richard Stevens at ¶ 7; Declaration of Robert Gramling at ¶ 6.

⁶³² Declaration of Richard Stevens at ¶ 6.

pole attachment agreements and their decision not to be direct-billed by USS, EAI is entitled to recover a reasonable overhead addition.

399. EAI denies the allegations in **Paragraph 188** of the Complaint and affirmatively refers to its responses to the allegations in paragraph 187 of the Complaint.

400. EAI denies the allegations in **Paragraph 189** of the Complaint and affirmatively refers to its responses to the allegations in paragraph 187 of the Complaint.

401. EAI denies the allegations in **Paragraph 190** of the Complaint.

402. EAI denies the allegations of **Paragraph 191** of the Complaint and affirmatively states that each allegation is based solely upon speculation and is grounded in Complainants' inaccurate "factual" allegations. EAI affirmatively states that the invoices to Cox have been supported with detailed billings and are fair, reasonable and nondiscriminatory assessments of the amounts owed by Cox under the terms of the pole attachment agreement.

403. EAI denies the allegations in **Paragraph 192** of the Complaint.

404. As to **Paragraph 193**, EAI admits that in an effort to accommodate Cox and obtain compliance of the pole attachment agreement, EAI agreed to allow Cox and its contractor, Utility Consultants, Inc. ("UCI") the opportunity to field engineer the make ready work in order to enter, where possible, design jobs into the EAI design system without a field visit by EAI or USS. Nonetheless, it was acknowledged and agreed that field visits by USS would still be required for special situations such as pole change outs. In order to confirm that UCI had properly designed the make ready work, Cox, UCI, EAI, and USS all agreed the parties would

conduct joint ride outs to review UCI's work. To date, two such ride outs have taken place in Russellville. Unfortunately, based on those two ride outs, it did not appear that Cox or UCI had the ability to adequately field engineer the work. In fact, at the conclusion of the second ride out, all the parties agreed that the make ready recommendations from UCI required reengineering or that make ready work by EAI was not needed. Nonetheless, EAI remains willing to work with Cox and its contractor to achieve compliance with the pole attachment agreement and the NESC.⁶³³ EAI denies the remaining allegations of Paragraph 193 of the Complaint.

405. EAI admits it is reasonable with respect to its engineering and construction standards as alleged in **Paragraph 194** of the Complaint. EAI affirmatively states that engineering and construction standards are uniformly applied by EAI as required under the pole attachment agreements and the NESC. EAI denies the remaining allegations of Paragraph 194 of the Complaint. EAI affirmatively states that due to the relatively small size of the CATV system in Gurdon (less than 1,000 poles), EAI performed the make ready design and retained USS to perform random pre and post inspections of Cox's work.⁶³⁴ In any event, in Gurdon, as well as in Magnolia, Malvern, Russellville and other areas subject to the pole attachment agreement, Cox is expected to comply with the terms of the pole attachment agreement and the NESC. EAI affirmatively refers to its response to the allegations in paragraph 193 of the Complaint.

406. EAI denies the allegations in **Paragraph 195** of the Complaint and affirmatively refers to its responses to the allegations in paragraph 194 of the Complaint.

⁶³³ Declaration of Wayne Harrell at ¶ 21.

⁶³⁴ Declaration of Wayne Harrell at ¶ 20.

407. EAI denies the allegations in **Paragraph 196** of the Complaint and affirmatively refers to its responses to the allegations in paragraph 194 of the Complaint.

408. EAI denies the allegations in **Paragraph 197** of the Complaint. EAI affirmatively states that USS's work in Magnolia is complete and Cox has cured its violations of the pole attachment agreement and the NESC in that area.⁶³⁵ In Malvern, Cox has been notified of numerous violations of the pole attachment agreement and the NESC. To date, 58 locations requiring make-ready work have been designed and delivered to Cox on December 17, 2004. Another 50 violations remain to be corrected by Cox.⁶³⁶ The date of completion of inspections by USS in the Malvern area, as well as the cost of such inspections, are within the control of Cox, as they will be conducted promptly upon notification that Cox has completed rectifying cited violations.

409. As to **Paragraph 198**, EAI affirmatively states that in Magnolia, where Cox and its contractor chose to cooperate with EAI and USS, there were few violations noted in the USS post-construction inspection. Those violations were corrected by Cox.⁶³⁷ In Malvern, where Cox was also instructed as to the requirements of the pole attachment agreement and the NESC before work ever commenced and where further instruction was offered to Cox and its contractor throughout the process, there were 378 violations noted in the USS post-construction inspection.⁶³⁸ Of those violations, 108 remain outstanding.⁶³⁹ EAI denies the remaining allegations of paragraph 198 of the Complaint.

⁶³⁵ Declaration of Tony Wagoner at ¶ 57.

⁶³⁶ Declaration of Wayne Harrell at ¶ 18.

⁶³⁷ Declaration of Tony Wagoner at ¶ 57.

⁶³⁸ Declaration of Tony Wagoner at ¶ 56.

⁶³⁹ Id.

410. EAI denies the allegations in **Paragraph 199** of the Complaint. EAI affirmatively states *Cox, as well as the other Complainants, are licensees that choose to rent available space on EAI poles.* If there is insufficient space available, EAI may deny access⁶⁴⁰ or allow Cox to pay to increase the available space on the pole (which may include replacing the existing pole with a larger pole) or burying its cable. On information and belief, in most instances where Cox would be required to pay to replace a pole in order to add sufficient space for cable, Cox has instead chosen to bury its cable. So long as the existing pole can safely accommodate EAI or, in some cases, EAI and a joint use partner, EAI has no obligation to replace an existing pole, much less pay the cost of replacing that pole.⁶⁴¹ However, where a safety concern is noted that is the responsibility of EAI, EAI will correct that concern and bear the cost of that correction.

411. EAI denies the allegations in **Paragraph 200** of the Complaint. EAI affirmatively states that as a result of its post-construction inspection, USS noted 378 violations by Cox in Malvern.⁶⁴² Of these violations, 108 remain outstanding.⁶⁴³ In Magnolia, the USS post construction inspection identified 56 violations. Of these violations, all have been corrected.⁶⁴⁴ EAI further states that Cox made additional corrections to violations in both Magnolia and Malvern as construction was in process and after those violations were identified by USS.

412. EAI denies the allegations in **Paragraph 201** of the Complaint. EAI affirmatively states that safety standards have been applied in a fair and non-discriminatory manner and that Cox has

⁶⁴⁰ *Southern Co. v. FCC*, 293 F. 3d 1338 (11th Cir. 2002).

⁶⁴¹ *Southern Company v. FCC*, 293 F. 3d 1338 (11th Cir. 2002).

⁶⁴² Declaration of Tony Wagoner at ¶ 57.

⁶⁴³ Declaration of Tony Wagoner at ¶ 57.

⁶⁴⁴ Declaration of Tony Wagoner at ¶ 56.

been treated in a just, reasonable and non-discriminatory manner. EAI further states that Cox has failed to honor the terms of the pole attachment agreement and is in breach thereof.

“Permitting Freeze” and Denial of Access Allegations

413. EAI admits the allegations contained in **Paragraph 202** of the Complaint.

414. EAI denies the allegations contained in **Paragraph 203** of the Complaint. EAI affirmatively states that EAI and USS have consistently and repeatedly advised representatives of Comcast and Alliance that further attachments on a specific circuit will be allowed at such time as the reported safety violations within that particular circuit have been corrected. EAI has required the Complainants to correct safety violations reported within a distribution circuit before allowing more attachments within that particular circuit for reasons of safety and reliability of EAI’s electrical systems and engineering purposes.⁶⁴⁵

415. EAI denies the allegations of **Paragraph 204** of the Complaint. EAI states that neither Comcast nor Alliance have taken any substantive action to correct safety violations which were reported to them over two years ago and have not cleared any single distribution circuit of all safety violations. The Complainants have taken a “cherry-picking” approach in making corrections by choosing only to correct those violations which require the least amount of time and expense to fix, which results in Comcast and Alliance personnel hop-scotching from one circuit to another.⁶⁴⁶ Not only is this approach in making corrections extremely inefficient, if in fact corrections are being made at all, but is also more time consuming and expensive in performing necessary post-inspection work. To date, Comcast has completed only 6,797

⁶⁴⁵ Declaration of Brad Welch at ¶ 20.

⁶⁴⁶ Declaration of Wilfred Arnett at ¶ 33.

corrections representing 14.3% of total reported safety violations. Comcast has not reported any corrections since February 2004.⁶⁴⁷ Similarly, Alliance has only completed 1,300 corrections representing 17.8% of total reported safety violations.⁶⁴⁸ EAI denies that a large number of safety violations attributed to Alliance for the Plumerville circuits are caused by EAI low-hanging neutrals or triplex and that only 100 safety violations remain to be corrected in the Plumerville circuits as alleged in Footnote 214 of the Complaint.⁶⁴⁹ This is yet another example of a misstatement of fact made by the Complainants and Mr. Bennett Hooks in this instance. EAI states that there are 713 reported safety violations which remain to be corrected by Alliance in the Plumerville, Arkansas circuits.⁶⁵⁰ Most of these safety violations involve the failure to bond Alliance's cable plant to EAI's vertical ground wires. EAI states that EAI has generated seventeen (17) make-ready work requests to correct safety violations caused by EAI in the Greenbrier and Plumerville circuits that were found incidental to inspecting cable plant. Twenty-five percent (25%) of this make-ready work has been completed with the remaining seventy-five percent (75%) already in the hands of the construction department to be completed.⁶⁵¹ EAI further states that despite the fact that EAI advised Comcast that attachments would not be allowed on Circuit V130, Comcast without permission or authorization from EAI made attachments to 68 poles on the circuit. Seventeen (17) of these poles had been previously reported to Comcast to have violations involving cable too close to energized facilities.⁶⁵² Not only was Comcast aware of these reported safety violations at the time the additional

⁶⁴⁷ *Id.* at Attachment C.

⁶⁴⁸ *Id.*

⁶⁴⁹ Declaration of John Tabor at ¶ 31.

⁶⁵⁰ *Id.*

⁶⁵¹ Declaration of Brad Welch at ¶ 15.

⁶⁵² Declaration of John Tabor at ¶¶ 9,10.

unauthorized attachments were made, Comcast did not even take the time or effort to correct the safety violations at the time the unauthorized attachments were placed on the poles.

416. EAI denies the allegations contained in **Paragraph 205** of the Complaint. EAI affirmatively states that each and every reported safety violation is a separate and distinct violation of the NESC and/or industry standards relating to electrical facilities and cable plant. EAI has advised Comcast and Alliance representatives if they dispute a particular reported safety violation, that EAI and USS will consider each disputed violation on a case-by-case basis provided that a professional electrical engineer licensed in the State of Arkansas certifies in writing to EAI that the particular condition is, in fact, not a violation. To date, Comcast and Alliance have disputed very few specific reported safety violation, but rather continue to object to the entire classifications of violations based on broad generalities such as "grandfathering."⁶⁵³

417. EAI denies the allegations contained in **Paragraph 206** of the Complaint. EAI affirmatively states that EAI has never "looked the other way" if a known hazardous condition exists within its electrical distribution or transmission systems. EAI makes every effort to operate and maintain its entire systems in a safe, adequate and reliable manner as required under the rules and regulations of the Arkansas Public Service Commission, the NESC, and EAI's specifications. EAI again states the EAI has informed Comcast and Alliance that EAI and USS will consider each disputed violation on a case-by-case basis provided an Arkansas-licensed professional electrical engineer certifies in writing that the particular condition is not a violation. However, EAI will not and cannot be expected to consider Comcast's or Alliance's objections which are couched in broad generalities relative to classifications of reported safety violations.

⁶⁵³ Declaration of Wilfred Arnett at ¶ 23.